



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/18/05	Bill No:	AB 911
Tax:	Sales and Use Property	Author:	Chu
Related Bills:	AB 1618 (Klehs)		

BILL SUMMARY

This bill would, among other things, require business property statements that are filed with county assessors for property tax purposes to include information regarding sales or use tax paid on acquisitions of the property identified on the statements, and allow that information to be shared with the Board of Equalization (Board) and the Franchise Tax Board (FTB), as specified.

ANALYSIS

Current Law

Under the existing Use Tax Law, Chapter 3 (commencing with Section 6201) of Part 1 of Division 2 of the Revenue and Taxation Code, a use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The use tax is imposed on the purchaser, and unless that purchaser pays the use tax to a retailer registered to collect the California use tax, the purchaser is liable for the tax, unless the use of that property is specifically exempted or excluded from tax. The use tax is the same rate as the sales tax and is required to be remitted to the Board on or before the last day of the month following the quarterly period in which the purchase was made, or to the FTB via the income tax return. A use tax liability is primarily a result of a California consumer or business making a purchase of an item for their own use from an out-of-state retailer that is not registered with the Board to collect the use tax.

Under existing property tax laws, an ad valorem tax is imposed on all assessable personal property used in a trade or business, and its cost must be reported annually to the assessor on the business property statement as provided for in Section 441. The business property statement shows all taxable property, both real and personal, owned, claimed, possessed, controlled, or managed by the person filing the property statement. When the aggregate cost of the taxable personal property is \$100,000 or more, the person is required to file a business property statement, signed under penalty of perjury, each year with the assessor.

The content of the business property statement is prescribed by the Board pursuant to Section 452 and is to be used by all assessors. Section 452 specifies that the property statement shall not include any question that is not germane to the assessment function

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and Section 451 specifies the information furnished in the statement must be held secret by the assessor.

Assessors are required to audit the books and records of a taxpayer engaged in a profession, trade or business at least once every four years if their assessable trade fixtures and business tangible personal property has a full value of \$400,000 or more as provided for in Section 469. Taxpayers are required to make their records available to assessors for examination, including details related to property acquisition transactions, as provided in Section 441.

Proposed Law

This bill would add or amend the Revenue and Taxation Code to do all the following:

- Amend Section 452 to require the business property statement filed by businesses with the county assessor to include 1) information regarding the business' sales and use tax obligations, and 2) a request for information concerning the business' acquisitions of tangible personal property for which sales or use tax was not paid;
- Amend Section 451 to authorize and require the county assessor to provide to the Board information contained in the property statement when businesses indicate purchases or acquisitions of tangible personal property were made without payment of sales or use tax;
- Further amend Section 451, and add Section 7056.4 to the Sales and Use Tax Law to authorize the Board to provide the FTB any information obtained from the assessor that would facilitate the FTB with its administration of specified provisions of the Personal Income Tax and Corporations Tax Law, as added by this bill;
- Amend Section 441 to expressly state that details related to property acquisition transactions to be made available to the assessor includes whether sales or use tax, as applicable, was paid; and
- Add Sections 17039.3 and 23036.3 to the Personal Income Tax Law and the Corporations Tax Law, respectively, that would disallow a deduction or credit on specified depreciable property, unless all sales and use tax, and any interest or penalty, is paid on the purchase of that property.

Background

The collection of use tax relies heavily on the voluntary compliance of purchasers of tangible personal property. However, due to the general misconception that purchases from outside this state are "tax free" and that audit resources are insufficient to pursue all purchasers, the voluntary compliance rate has been very low. Untaxed purchases from out of state retailers is the largest area of non-compliance the Board's audit staff encounters.

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The Board is the state agency responsible for administering the provisions of the use tax. However, in an effort to increase voluntary compliance by purchasers not registered with the Board, legislation enacted in 2003, SB 1009, (Alpert, Ch. 718) requires the FTB to add a line to the state's income tax forms allowing taxpayers to self-report their use tax liabilities to the FTB.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author in an effort to increase use tax education and compliance.
2. **Enactment of this bill would “get the word out.”** Collecting use tax relies heavily on voluntary compliance. This bill would assist in informing and advising those taxpayers most likely to be incurring a greater portion of use tax liabilities of their responsibilities under the law. It would also enable the tax agencies and county assessors to share the information obtained from the business property statements to facilitate administration of the tax laws.
3. **Personal Property Statements.** Proponents of closing the use tax gap have noted that local county assessors receive annual property tax statements from businesses related to their personal property holdings that could be used as a data mining source. However, in its present form, the business property statement is not a useful discovery tool. Taxpayers report their personal property holdings by year of acquisition in lump sum amounts that are broken down by a few broad category types. In addition, there are issues with the confidentiality of these property statements as well as their use for other tax purposes, which this bill would expressly address.
4. **Administrative efficiencies in using an existing taxpayer base.** Proponents note that the annual contact that assessors already have with businesses that own tangible personal property at the local level could be a cost effective means to educate and obtain voluntary use tax remittance from businesses as well as provide use tax leads for the Board to pursue.
5. **State and Local Government partnership and cooperation to facilitate administration of the tax laws.** The Board is the state agency responsible for administering the provisions of the use tax. This bill would require county assessors to incur costs in processing the use tax questions that would be added to the local property tax statements and transmitting relevant data to the Board. Proponents note that these additional costs would be offset by the additional revenues local governments would receive. For instance, local governments would receive a share of previously uncollected use tax as well as an increase in property tax revenues, due to the addition of use tax to business personal property assessments.
6. **Technical amendment.** On page 3, line 35, “on” should be substituted for “for.”
7. **Related legislation.** Assembly Bill 1618 (Klehs) is similar to this measure, except it does not contain the income tax related provisions in this bill.

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COST ESTIMATE

The Board would incur costs attributable to revising the business property statements and associated instructions, educating taxpayers, pursuing leads from the business property statements, and responding to taxpayer inquiries. An estimate of these costs is pending.

REVENUE ESTIMATE

A revenue estimate is pending.

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